

§ 143B-935. Criminal history record checks of employees of and applicants for employment with the Department of Health and Human Services, and the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.

(a) Definitions. – As used in this section, the term:

(1) "Covered person" means any of the following:

- a. An applicant for employment or a current employee in a position in the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety who provides direct care for a client, patient, student, resident or ward of the Division.
- b. A person who supervises positions in the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety providing direct care for a client, patient, student, resident or ward of the Division.
- c. An applicant for employment or a current employee in a position in the Department of Health and Human Services.
- d. An independent contractor or an employee of an independent contractor that has contracted to provide services to the Department of Health and Human Services.
- e. A person who has been approved to perform volunteer services for the Department of Health and Human Services.
- f. An independent contractor or an employee of an independent contractor who has contracted with the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety to provide direct care for a client, patient, student, resident, or ward of the Division.
- g. A person who has been approved to perform volunteer services in or for the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety to provide direct care for a client, patient, student, resident, or ward of the Division.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services or the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27,

Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by the Department of Health and Human Services or the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, the North Carolina Department of Public Safety may provide to the requesting department or division a covered person's criminal history from the State Repository of Criminal Histories. Such requests shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the requesting department or division shall provide to the Department of Public Safety a form consenting to the check signed by the covered person to be checked and any additional information required by the Department of Public Safety. National criminal record checks are authorized for covered applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department of Health and Human Services or the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall provide to the North Carolina Department of Public Safety the fingerprints of the covered person to be checked, any additional information required by the Department of Public Safety, and a form signed by the covered person to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Health and Human Services and the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall keep all information pursuant to this section confidential. The Department of Public Safety shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Health and Human Services or the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Department of Public Safety. All of the information either department receives through the checking of the criminal history is privileged information and for the exclusive use of that department.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Health and Human Services or the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department of Health and Human Services or the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety in determining whether employment shall be denied:

- (1) The level and seriousness of the crime;
- (2) The date of the crime;
- (3) The age of the person at the time of the conviction;
- (4) The circumstances surrounding the commission of the crime, if known;
- (5) The nexus between the criminal conduct of the person and job duties of the person;
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
- (7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Health and Human Services and the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Health and Human Services and the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section. (1997-260, s. 1; 1997-443, s. 11A.118(b); 1998-202, s. 4(f); 2000-137, s. 4(h); 2003-214, s. 1(2); 2005-114, s. 4; 2011-145, s. 19.1(l); 2012-12, s. 2(nn); 2012-83, s. 5; 2014-100, ss. 17.1(m), (o), (q), (aaa); 2015-181, s. 47; 2017-186, ss. 2(jjjjjj), 3(b).)